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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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	:	98 CV 7045 (ARR)
EDMUND PRESCOTT,	:	
	:	<u>NOT FOR</u>
Petitioner,	:	<u>ELECTRONIC OR PRINT</u>
-against-	:	<u>PUBLICATION</u>
	:	
UNITED STATES OF AMERICA,	:	
	:	<u>OPINION AND ORDER</u>
Respondent.	:	
	:	
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ROSS, United States District Judge:		

In May 1996, petitioner Edmund Prescott was convicted of attempting to possess with intent to distribute cocaine in violation of 21 U.S.C. § 846. U.S. v. Prescott, E.D.N.Y. No. 95-CR-535 (ARR). On February 2, 1997, he was sentenced to twenty years imprisonment and ten years supervised release, and ordered delivered to the INS for immediate deportation upon his release. Id. On appeal, the Second Circuit rejected his claims and affirmed his sentence on September 19, 1997. U.S. v. Prescott, No. 97-1079, 1997 U.S. App. LEXIS 26090 (2d Cir. Sept. 19, 1997), reported at 125 F.3d 845. The Supreme Court denied petitioner’s application for writ of certiorari on March 30, 1998. U.S. v. Prescott, 523 U.S. 1053 (1998).

Prescott filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2255 in this court on November 16, 1998. Prescott v. U.S., E.D.N.Y. No. 98-CV-7045 (ARR). That petition was denied on April 23, 1999. Id. Petitioner applied to the Second Circuit for a certificate of appealability; the Court of Appeals denied his request and dismissed his appeal on September 14, 2000. Prescott v. U.S., 2d Cir. No. 99-2296.

On February 15, 2006, Prescott filed a document entitled “Notice of Motion Pursuant to Rule 60(b)(6) for Relief from Judgment Pursuant to Section 28 U.S.C. 2255” in this court. On

February 21, 2006, I denied Prescott's request for a downward departure and notified Prescott that if he sought to renew his § 2255 motion, he should seek permission to do so before the Court of Appeals for the Second Circuit.

Insofar as Prescott – by his February 15, 2006 filing – seeks reargument of his previously denied § 2255 petition, the court DENIES his request for reconsideration.

Prescott has not articulated any basis for reconsideration under Rule 60(b). He presents no evidence of “mistake, inadvertence, surprise, or excusable neglect;” newly discovered evidence; or “fraud [], misrepresentation, or other misconduct of an adverse party.” Fed. R. Civ. P. 60(b)(1)-(3). Similarly, the court's prior judgment is not void; it has not been satisfied, released, or discharged; no underlying judgment has been reversed or otherwise vacated; and Prescott has not demonstrated that “it is no longer equitable that the judgment should have prospective application.” Id. at 60(b)(4)-(5). Finally, Prescott has presented no other compelling reason that would justify relief. Id. at 60(b)(6). Even if Prescott had established a basis for reconsideration of his previously denied habeas petition, the reconsideration would be denied on the merits.

Accordingly, petitioner's request for reconsideration is DENIED. The Clerk of the Court is directed to enter judgment accordingly.

SO ORDERED.


Allyne R. Ross
United States District Judge

Dated: May 2, 2006
Brooklyn, New York

SERVICE LIST:

Petitioner:

Edmund Prescott #50723-053
Federal Correctional Institution
P.O. Box 2000
Fort Dix, NJ 08640